

Appl. No.: 10/828,746
Amdt. Dated: March 20, 2009
Reply of Office action of December 10, 2008

Docket No. KOCH-10131

REMARKS

Claims 1-6, 8-14, 16-21 and 23-25 are currently pending in the application. Claims 1, 8-10, 14, 17, 18, 21, 23 and 24 have been amended. Applicant requests reconsideration of the application in light of the following remarks.

Telephone Interview

Applicant's attorney wishes to thank the Examiner for his courtesy and time during a telephone interview that was held on March 18, 2009. The Examiner's comments and insight were very helpful in preparing this response. It is hoped that the comments below reflect the spirit of the interview.

Rejections under 35 U.S.C. §102

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Brothers v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Claims 1-6 were rejected under 35 U.S.C. § 102(b) as being anticipated by Kihm (U.S. Patent No. 6,068,163, hereinafter "Kihm"). Applicant respectfully traverses this rejection and requests reconsideration of the claims.

Kihm discloses a fuel dispensing apparatus that has a pickup tube 30 that is used to dispense fuel from inside of the container to outside of the container. The Examiner argues that this pickup tube may be a recess that can receive a discharge hose. The Examiner also

states that Kihm teaches a hose recess that has openings on the front end (at 36) and the rear end (at 32). Kihm does not set forth every element in Claim 1 as it is currently amended. Particularly, claim 1 discloses, “a hose recess comprising a right wall, a left wall, an upper wall, and an opening on the front end of the container the hose recess extending from the front end to the rear end of the container”. Kihm does not show a hose recess that extends from its front wall 8 to its rear wall 10 of the container 2 (See Kihm col. 2, lines 41-64). Rather the pickup tube that the Examiner indicates is a hose recess is actually internal to the container and does not extend from the front wall to a rear wall of the container.

Additionally, since the Examiner equates the pickup tube 30 of Kihm to a hose recess, the pickup tube cannot retain a discharge hose between the upper wall, right wall, left wall and ground surface as recited in claim 1. The pickup tube 30 is utilized to dispense fuel from within the container 2 out of the container 2 (See Kihm col. 3, lines 5-31). The pickup tube would not function properly if it were not internal to the container and further does not show or teach the retaining of a discharge hose between three walls and a **ground surface**. This argument appears to be overreaching and therefore does not teach the claim limitation of “configured to receive a discharge hose between the right wall, left wall, upper wall, and a **ground surface**,” as recited in independent claim 1.

Claim 1 has now been amended to include “feet coupled to the bottom portion of the container.” Support for the amendment can be found in claim 8, as originally filed. There is no disclosure of feet in Kihm. Claim 1 has been further amended to positively recite “receiving a discharge hose.” Accordingly, Kihm does not disclose every element of claim 1 and claim 1 is therefore allowable.

Claims 2-6 are also allowable for, among other reasons, depending from an allowable independent claim. Applicant respectfully requests that the anticipation rejection of claims 2-6 be withdrawn.

Applicant respectfully requests that the anticipation rejections of claims 1-6 be withdrawn.

Rejections under 35 U.S.C. §103

To establish a *prima facie* case of obviousness under 35 U.S.C. §103, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Third, the cited prior art reference must teach or suggest all of the claim limitations. Furthermore, the suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based upon the Applicants' disclosure. A failure to meet any one of these criteria is a failure to establish a *prima facie* case of obviousness. MPEP §2143.

Claims

Claims 8-14, 16-21 and 23-25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kihm (U.S. Patent No. 6,068,163, hereinafter "Kihm"), in light of Ward (U.S. Patent No. 4,416,396, hereinafter "Ward"). Applicant respectfully traverses this rejection and requests reconsideration of the claims.

Kihm discloses a fuel dispensing apparatus that has a pickup tube 30 that is used to dispense fuel from inside of the container to outside of the container. The Examiner argues that this pickup tube may be a recess that can receive a discharge hose. The Examiner also states that Kihm teaches a hose recess that has openings on the front end (at 36) and the rear end (at 32). Kihm does not set forth every element in claims 10 and 18 as they are currently amended. Particularly, claims 10 and 18 each disclose, "a hose recess comprising a right

wall, a left wall, an upper wall, a rear wall, and an opening on the front end of the container, the hose recess extending from the front end up to the rear end of the container to form the rear wall”. Kihm does not show a hose recess that extends from its front wall 8 up to its rear wall 10 of the container 2 (See Kihm col. 2, lines 41-64). Rather the pickup tube that the Examiner indicates is a hose recess is actually internal to the container and does not extend from the front wall to a rear wall of the container.

Additionally, since the Examiner equates the pickup tube 30 of Kihm to a hose recess, the pickup tube as disclosed in Kihm cannot “receiv[e] a discharge hose and a sewer fitting between the right wall, left wall, upper wall, rear wall, and a ground surface the bottom portion of the container rests on for holding down of the discharge hose during draining”, as required by claims 10 and 18. The pickup tube 30 is utilized to dispense fuel from within the container 2 out of the container 2 (See Kihm col. 3, lines 5-31). The pickup tube would not function properly if it were not internal to the container and further does not show or teach the retaining of a discharge hose between three walls and a ground surface. This argument appears to be overreaching and therefore does not teach the claim limitation of “receiving a discharge hose between the right wall, left wall, and upper wall, and a **ground surface**,” as recited in independent claims 10 and 18.

Since Kihm does not disclose a hose recess as recited in claims 10 and 18, there is no motivation to combine Kihm with the feet of Ward. Furthermore, the combination of Kihm in view of Ward would not result in the claimed invention, particularly “feet coupled to the bottom portion of the container,” as recited in independent claims 1, 10 and 18; “wherein the feet are each a circular molded relief protruding from a bottom portion of the container and configured to rest over a splash ring coupled to a sewer fitting coupled to an end portion of a discharge hose and rest on a ground surface,” as recited in dependent claims 9, 17 and 23;

and "wherein the feet are integral with the hose recess," as recited in dependent claims 24 and 25.

The Examiner's convoluted reading of Kihm especially fails to make obvious "feet coupled to the bottom portion of the container" when the front end and the top portion of the container are being used interchangeably by the Examiner.

Ward fails to overcome the deficiencies of Kihm. Ward discloses a dispenser and container for fuel and oil having separate compartments, including three legs which lift the bottom of the fuel and oil compartments off the ground by about a foot. Each compartment is provided with an opening at the bottom connecting to a hose several feet long so that fuel or oil will **flow by gravity** into the tank of a chain saw or similar internal combustion engine powered device resting on the ground, whereas in Applicant's claimed invention, the container holds down the discharge hose for draining. Kihm and Ward are not even properly combinable as the hose is internal to the container of Kihm and external to the container of Ward. Whether or not "[i]t would have been obvious to one of ordinary skill in the art at the time of the present invention, to provide feet at the bottom of the container taught by Kihm, as taught by Ward," as stated by the Examiner on the bottom of page 3 to the top of page 4 of the last Office action, the combination of references still does not result Applicant's claimed invention.

Additionally, independent claims 10 and 18 recite a hose recess and now positively recite "receiving a discharge hose and a sewer fitting". Neither Kihm nor Ward discloses a hose recess and receiving a discharge hose and sewer fitting. Note, the term "sewer fitting" is found in both claims 10 and 18, as originally filed.

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Accordingly, Kihm in light of Ward does not disclose every element of independent claims 10 and 18 and they are therefore allowable. Applicant respectfully requests that the obviousness rejection of claims 10 and 18 be withdrawn.

Furthermore, if an independent claim, such as claims 1, 10 and 18, is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is also nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Applicant respectfully asserts, based on the arguments provided *supra*, that claims 8, 9, 11-14, 16, 17, 19-21 and 23-25 are nonobvious.

Applicant respectfully requests that the obviousness rejections of claims 8-14, 16-21 and 23-25 be withdrawn.

Regarding Doctrine of Equivalents

Applicant hereby declares that any amendments herein that are not specifically made for the purpose of patentability are made for other purposes, such as clarification, and that no such changes shall be construed as limiting the scope of the claims or the application of the Doctrine of Equivalents.

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CONCLUSION

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

It is requested that a one-month extension of time be granted for the filing of this response, and the appropriate extension filing fee of \$65.00 should be charged to Deposit Account No. 19-0513.

If any fees, including extension of time fees or additional claims fees, are due as a result of this response, please charge Deposit Account No. 19-0513. This authorization is intended to act as a constructive petition for an extension of time, should an extension of time be needed as a result of this response. The examiner is invited to telephone the undersigned if this would in any way advance the prosecution of this case.

Respectfully submitted,

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